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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

09/865,469

05/25/2001

Aubrey B. Poore JR.

CSUR.01USR1

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COCHRAN FREUND & YOUNG LLC

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SUITE 201

FORT COLLINS, CO 80525

EXAMINER

HELLNER, MARK

ART UNIT

PAPER NUMBER

3663

MAIL DATE

DELIVERY MODE

05/03/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/865,469 | <b>Applicant(s)</b><br>POORE, AUBREY B. |  |
|                              | <b>Examiner</b><br>Mark Hellner      | <b>Art Unit</b><br>3663                 |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 July 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2 and 3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2 and 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Reissue Applications***

The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following:

The statement specifying at least one error being relied on is as follows...

“In an Office Action dated 06 November 2008, the Examiner asserted that subject claim 1, the sole claim in the parent patent, is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Every error in the patent application which was corrected in the present reissue application, and which is not covered by prior declarations submitted in this application, arose without any deceptive intention on the part of the applicant.”

This statement is incorrect because the specified error comes from an Examiner's action, not the inventor. It is suggested that the error statement be worded such that it comes from the inventor.

For example, “claim 1 is incorrect because it is directed to non-statutory subject matter under 35 U.S.C. 101”.

The oath declaration does not list each and every amendment by date that has been made during the prosecution history of the present application. As a result, there is no basis for the statement...

“I have reviewed and understand the contents of the above4denUfled specification, including the claims, as amended by any amendment referred to above.”

Claims 2 and 3 are rejected as being based upon a defective reissue oath/declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

Art Unit: 3663

The nature of the defect(s) in the oath/declaration is set forth in the discussion above in this Office action.

***Specification***

Page 2 of the specification recites the following...

“This application is a continuation of U.S. Patent Application Serial No. 09/312,036 filed May 14, 1999 which is a continuation of U.S. Patent Application Serial No. 08/682,904 filed July 16, 1996, now U.S. Patent 5,959,574 which is a...”

The present application is a reissue of U.S. Patent 5,959,574 and, as such, is not a continuation of U.S. Patent Application Serial No. 09/312,036. Appropriate correction is required.

Any inquiry concerning this communication should be directed to Mark Hellner at telephone number 571 272 6981.

/Mark Hellner/

Primary Examiner, Art Unit 3663